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9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

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12 LARGO CONCRETE, INC., a California
Corporation; N.M.N. CONSTRUCTION, INC., a
13 California Corporation.

14 Plaintiffs,

15 v.

16 LIBERTY MUTUAL FIRE INSURANCE
COMPANY, a Massachusetts Corporation, and
17 DOES 1 through 100, inclusive.

18 Defendants.

19 Case No. C07-04651 CRB (ADR)
The Hon. Charles R. Breyer

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21 **OBJECTIONS TO EVIDENCE
SUBMITTED IN CONJUNCTION WITH
LIBERTY MUTUAL'S REPLY TO
LARGO'S OPPOSITION**

22 Date: December 21, 2007
Time: 10:00 a.m.
Ctrm: 8

23 [Opposition to Administrative Motion; and
[Proposed] Order Filed and Served
Concurrently Herewith]

24 Complaint filed: September 10, 2007

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26 AND RELATED COUNTERCLAIM

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28 Plaintiffs/Counter-Defendants, LARGO CONCRETE, INC. and N.M.N. CONSTRUCTION,
INC. (hereinafter "Largo") hereby submit the following Objections to Evidence Submitted by
LIBERTY MUTUAL FIRE INSURANCE COMPANY (hereinafter "LMF") in Conjunction With
LMF's Reply to Largo's Opposition to Motion to Disqualify Roxborough, Pomerance, & Nye
(hereinafter "RPN") from representing Largo.

1 **I. GENERAL OBJECTIONS**

2 Largo objects to each and every declaration submitted in conjunction with LMF's Reply to
3 Largo's Opposition on the grounds that any evidence contained within such declaration should have
4 been presented in conjunction with LMF's moving papers. The evidence submitted in support of
5 LMF's moving papers was limited to the very limited, conclusory statements contained with the
6 Declarations of Lisa Hansen and Melodee Yee. LMF should not be permitted to wait until filing its
7 Reply to submit an additional TEN declarations and preclude Largo from addressing the contents of
8 those declarations.

9 **II. SPECIFIC OBJECTIONS**

10 **A. Declaration of Greg Farkas**

11 Largo objects to Paragraphs 2 and 5 of the Declaration of Greg Farkas on the grounds that
12 Exhibits "B" and "F" described therein are not provided for Largo's review. LMF has filed an
13 administrative motion to submit these exhibits under seal based on the attorney-client privilege. LMF
14 must offer a sufficient explanation as to why the report prepared by Greg Farkas that shows the fee
15 and time entries for work performed by Craig Pynes during the period of January 1, 2003 through
16 June 1, 2005 (Exhibit "B" to the Farkas Declaration) and partially redacted electronic invoices dated
17 May 20, 2004 regarding the *Ashou* matter (Exhibit "F" to the Farkas Declaration) contain information
18 that is subject to the attorney-client privilege. A blanket assertion, without further specificity, does
19 not enable RPN to intelligently respond.

20 **B. Declaration of Hector Barba**

21 Largo objects to Paragraph 2 of the Declaration of Hector Barba based on Evidence Code
22 Sections 402 and 403 on the grounds that the statements contained therein are irrelevant, conclusory,
23 and misleading.

24 **C. Declaration of William Cupelo**

25 Largo objects to Paragraphs 3 and 4 of the Declaration of William Cupelo based on Evidence
26 Code Sections 402 and 403 on the grounds that the statements contained therein are irrelevant and
27 misleading. These paragraphs describe policies and procedures employed by Liberty Mutual

1 Insurance Company and Liberty Mutual Fire Insurance Company, as well as the identity of Liberty
2 Mutual Insurance Company and Liberty Mutual Fire Insurance Company, but fail to specify the time
3 period in which these policies and procedures were in place, or the time period in which the named
4 individuals were employed by either Liberty Mutual Insurance Company or Liberty Mutual Fire
5 Insurance Company. Without such foundational evidence, these statements are irrelevant and
6 misleading as Craig Pynes' employment at Kern & Wooley was between July, 2003-March, 2004.

7 **D. Declaration of Ron Skocypec**

8 Largo objects to Paragraphs 4, 5, and 6 of the Declaration of Ron Skocypec based on Evidence
9 Code Sections 402, 403 and 602 on the grounds that the statements contained therein lack foundation
10 and are irrelevant and misleading.

11 Paragraphs 4, 5, and 6 of Mr. Skocypec's declaration should be stricken because Mr.
12 Skocypec is not the person most knowledgeable to testify regarding who created and/or worked on the
13 privilege log attached thereto as Exhibit "A". There is no evidence that Mr. Skocypec performed any
14 work on, or was in any way involved, in the *Tony's Fine Foods* matter.

15 Mr. Pynes' testimony is clear that the privilege log he worked on was less than one page long
16 and, when presented with Exhibit "A" at his deposition, he did not recall much of the information
17 contained thereon and did not recall the draft he prepared to be as long as Exhibit "A". The
18 statements contained within Paragraph 5 of Mr. Skocypec's declaration are misleading because they
19 imply, based exclusively on the title under which the document was saved on a computer system, that
20 Mr. Pynes was the only individual to work on the document attached as Exhibit "A" to Mr.
21 Skocypec's declaration. There is no foundation for such a conclusion.

22 **E. Supplemental Declaration of Scott Sveslosky**

23 Largo objects to Paragraphs 6, 7, 8, and 10 of the Supplemental Declaration of Scott
24 Sveslosky based on Evidence Code Sections 402, 403, and 602 on the grounds that the statements
25 contained therein lack foundation and are irrelevant and misleading.

26 The statements contained within Paragraphs 6, 7, 8, and 10 of the Supplemental Declaration of
27 Scott Sveslosky refer to, and are based upon, Exhibits "B" and "F" to the Declaration of Greg Farkas

1 which LMF is seeking to submit under seal. Largo objects to these statements on the grounds that the
 2 documents attached as Exhibits "B" and "F" to the Declaration of Greg Farkas speak for themselves
 3 and any interpretation or summary of those documents by Mr. Sveslosky lacks foundation and is
 4 irrelevant and misleading.

5 **F. Declaration of Frank Falzetta**

6 Largo objects to Paragraph 3 of the Declaration of Frank Falzetta based on Evidence Code
 7 Sections 402 and 403 on the grounds that the statements contained therein are irrelevant and
 8 misleading.

9 Paragraph 3 of the Declaration of Frank Falzetta refers to Exhibit "M" which is purported to
 10 be a copy of Republic Services, Inc.'s Opposition to Liberty's Mutual's Motion to Disqualify Craig
 11 Pynes and the Roxborough Firm in the *Republic Services, Inc. v. Liberty Mutual Insurance Co.*
 12 matter. This paragraph and Exhibit "M" should be stricken because the statements and information
 13 contained therein are completely irrelevant and misleading. The evidence and arguments presented in
 14 Exhibit "M" addressed different facts and were made under Kentucky law in a completely separate
 15 action. As LMF acknowledges, state law governs motions to disqualify counsel. In addition,
 16 ultimately, the decision to disqualify counsel for conflict of interest is within the trial court's
 17 discretion. As such, any probative value this evidence may have is substantially outweighed by the
 18 danger of unfair prejudice and confusion of the issues and should be excluded under Evidence Code
 19 Sections 403.

20 **G. Declaration of Greg Brisee**

21 Largo objects to Paragraphs 1 and 2 of the Declaration of Greg Brisee based on Evidence
 22 Code Sections 402 and 403 on the grounds that the statements contained therein are irrelevant and
 23 misleading.

24 Mr. Brisee's declaration indicates that he is currently the Operations Support Manager for
 25 Liberty Mutual Insurance Company and Liberty Mutual Fire Insurance Company. The statements
 26 contained within his declaration are irrelevant because they address the current practice and
 27 procedures undertaken by Liberty Mutual Insurance Company and Liberty Mutual Fire Insurance

1 Company, but in no way address the practices and procedures undertaken during the relevant and
2 limited time period, the time period in which Craig Pynes worked for Kern & Wooley (July, 2003-
3 March, 2004).

4 DATED: December 18, 2007

ROXBOROUGH, POMERANCE & NYE LLP

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6 By: 
NICHOLAS P. ROXBOROUGH, ESQ.
MICHAEL L. PHILLIPS, ESQ.
7 Attorneys for Plaintiffs/Counter-Defendants,
8 LARGO CONCRETE, INC. and N.M.N.
CONSTRUCTION, Inc.

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